

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

VICENTE ANAYA,

Plaintiff,

vs.

Civ. No. 12-345 JP/WPL

STATE OF NEW MEXICO,  
DEPARTMENT OF CORRECTIONS, and  
JOE WILLIAMS, CORRECTIONS SECRETARY,  
GUADALUPE COUNTY CORRECTIONAL FACILITY  
SUBSIDIARY of GEO GROUP, INC., and  
GEO GROUP INC., and ERASMO BRAVO, Warden,  
Individually and in his official capacity,  
CHAVEZ COUNTY CORRECTION CENTER,  
SUBSIDIARY of GEO GROUP, INC., and GEO GROUP INC., and  
ALFONSO SOLIS, Detention Administrator, individually  
and in this official capacity, and LEA COUNTY CORRECTIONAL FACILITY,  
SUBSIDIARY of GEO GROUP, INC., and GEO GROUP INC.,  
and JAMES JANECKA, Warden, Individually and in his official capacity,

Defendants.

MEMORANDUM OPINION AND ORDER

This is a civil rights case based upon violations of the United States Constitution and the New Mexico State Constitution. Plaintiff claims that he was wrongfully incarcerated for a total of 771 days because Defendants failed to apply his earned good time credit to reduce his sentence. Plaintiff moves to voluntarily dismiss Defendants Guadalupe County Correctional Facility, Subsidiary of GEO Group, Inc. and GEO Group, Inc. (Guadalupe County Correctional Facility); Erasmo Bravo; Chaves County Correction Center, Subsidiary of GEO Group, Inc. and GEO Group, Inc. (Chaves County Correction Center); and Alfonso Solis because they were not involved in the alleged wrongful incarceration. MOTION TO DISMISS AGAINST CERTAIN DEFENDANTS AND MOTION TO AMEND TO INCLUDE OTHER PROPER

DEFENDANTS (Doc. No. 25) (Motion to Dismiss and Amend), filed June 20, 2012. Plaintiff also seeks to amend his COMPLAINT FOR DAMAGES (Doc. No. 1) (Complaint) to add the Roswell Correctional Center, Subsidiary of GEO Group, Inc., and GEO Group, Inc. (Roswell Correctional Center); and its warden, Joni Brown, in her individual and official capacity, as Defendants. *Id.*

As a preliminary matter, the Court notes that Plaintiff did not comply with D.N.M. LR-Cv 7.1(a) which requires that a “[m]ovant must determine whether a motion is opposed, and a motion that omits recitation of a good-faith request for concurrence may be summarily denied.” In the interest of justice, the Court will not summarily deny the Motion to Dismiss and Amend for Plaintiff’s failure to comply with D.N.M. LR-Cv 7.1(a). Plaintiff, however, is forewarned that the Court will not hesitate to sanction Plaintiff for future violations of the Local Rules.

Defendants State of New Mexico, Department of Corrections, and Joe Williams did not respond to the Motion to Dismiss and Amend. That failure to respond means that those Defendants have consented to granting the Motion to Dismiss and Amend. *See* D.N.M. LR-Cv 7.1(b) (failure to respond to a motion “constitutes consent to grant the motion.”). Defendants Chaves County Correction Center and Alfonso Solis, likewise, did not respond to the Motion to Dismiss and Amend. Defendants Chaves County Correction Center and Alfonso Solis, however, are not yet represented by counsel and have not answered or otherwise responded to the COMPLAINT FOR DAMAGES (Doc. No. 1) (Complaint) despite having been served with the Complaint on May 3, 2012. *See* Doc. Nos. 8 and 9. Defendants Guadalupe County Correctional Facility; Erasmo Bravo; Lea County Correctional Facility, Subsidiary of GEO Group, Inc., and GEO Group, Inc.; and James Janecka (collectively, the GEO Defendants) do not object to dismissing Defendants Guadalupe County Correctional Facility, Erasmo Bravo, Chaves County

Correction Center, and Alfonso Solis. Moreover, the GEO Defendants do not take a position on Plaintiff's request to amend the Complaint to add the Roswell Correctional Center and Joni Brown as Defendants.

The GEO Defendants note, however, that the Roswell Correctional Center is not a subsidiary of the GEO Group, Inc. and is not operated by GEO Group, Inc., that Joni Brown is not an employee of GEO Group, Inc., and that counsel for the GEO Defendants does not represent the Roswell Correctional Center or Joni Brown. Plaintiff's counsel should take this information into account in deciding who should be sued with respect to the alleged wrongful incarceration at the Roswell Correctional Center. The Court reminds Plaintiff's counsel that Fed. R. Civ. P. 11(b) requires counsel to make "an inquiry reasonable under the circumstances" before filing claims on behalf of Plaintiff. This requirement to investigate claims naturally includes a reasonable investigation into who are the proper defendants.

Because there is no opposition to dismissing Defendants Guadalupe County Correctional Facility, Erasmo Bravo, Chaves County Correction Center, and Alfonso Solis, and because those Defendants are not involved in this case, the Court will dismiss Plaintiff's claims against Defendants Guadalupe County Correctional Facility, Erasmo Bravo, Chaves County Correction Center, and Alfonso Solis with prejudice. *See* Fed. R. Civ. P. 41(a)(2) (voluntary dismissal by court order). In addition, since there is no opposition to amending the Complaint to add additional defendants and since "[t]he court should freely give leave [to amend] when justice so requires," Fed. R. Civ. P. 15(a)(2), the Court will allow the Plaintiff to amend his Complaint to add proper defendants involved in his alleged wrongful incarceration at the Roswell Correctional Center.

IT IS ORDERED that:

1. the Plaintiff's MOTION TO DISMISS AGAINST CERTAIN DEFENDANTS AND MOTION TO AMEND TO INCLUDE OTHER PROPER DEFENDANTS (Doc. No. 25) is granted;

2. Plaintiff's claims against Defendants Guadalupe County Correctional Facility, Erasmo Bravo, Chaves County Correction Center, and Alfonso Solis will be dismissed with prejudice; and

3. Plaintiff is allowed to amend his Complaint by October 1, 2012 to add proper defendants involved in his alleged wrongful incarceration at the Roswell Correctional Center.

  
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SENIOR UNITED STATES DISTRICT JUDGE